

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

RICHARD GULLEY
51 Windsor Oval
New Rochelle, NY 10805

Plaintiff,

v.

DEPARTMENT OF THE ARMY
1500 Defense Pentagon
Washington, DC 20310

Defendant.

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Case No.: 19-cv-1283

FOIA COMPLAINT

1. This is an action seeking to redress the failure of Defendant, Department of the Army (“the Army” or “Defendant”), to provide Plaintiff with records responsive to Plaintiff’s June 7, 2018 Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”) request, seeking all closed Inspector General (IG) investigations from within the five years prior to the request, related to allegations of the Army improperly withholding pay and entitlements for Reserve component members. Plaintiff seeks this Court to enjoin Defendant from withholding these requested records and to order Defendant to immediately provide all records responsive to his FOIA request.

2. This court has jurisdiction over this matter pursuant to 5 U.S.C. § 552(a)(4)(B).

3. Venue properly vests in this court pursuant to 5 U.S.C. § 552(a)(4)(B).

4. Plaintiff, Richard Gulley, is a retired Army Colonel, and is the requester of the records which Defendant is withholding.

5. Defendant is an agency and/or military department of the United States and, as such, is subject to the FOIA pursuant to 5 U.S.C. § 552(f).

6. On June 7, 2018, Plaintiff sent a FOIA request to Defendant requesting all records regarding all IG investigations within the five years immediately predating the request which addressed allegations of the Army improperly withholding pay and/or entitlements for Reserve component members.

7. Prior to the request being made, various members of the public have raised concerns that the Army is improperly withholding appropriated funds that Congress intended be paid to uniformed servicemembers pursuant to 37 U.S.C. § 403, *Basic allowance for housing*.

8. The information requested is essential to determine whether Defendant is properly paying Soldiers appropriated funds as mandated by Congress.

9. FOIA mandates that an agency or military department on any request for records must make the records promptly available. 5 U.S.C. § 552(a)(3)(A).

10. Under FOIA, an agency must determine whether to comply with a FOIA request within 20 business days and must immediately notify the person making the request of such determination and the reasons for the decision. 5 U.S.C. § 552(a)(6)(A)(i)(I).

11. The 20-day deadline for an agency to determine whether to comply with a FOIA request begins on the earlier of: (1) the date the request is first received by the “appropriate component of the agency”; or (2) ten days after the request is first received by “any component of the agency that is designated in the agency's regulations . . . to receive [FOIA] requests” 5 U.S.C. § 552(a)(6)(A)(ii).

12. If an agency does not respond to a FOIA request by the statutory deadline, the requestor is deemed to have exhausted administrative remedies and may immediately pursue judicial review. 5 U.S.C. § 552(a)(6)(C)(i).

13. By email dated June 28, 2018, Plaintiff received a notification confirming receipt of his FOIA request on June 7, 2018, but informing him that his request would not be completed until approximately December 7, 2018.

14. By email dated January 9, 2019, a month past the approximate date of completion, Plaintiff requested a status update.

15. On January 10, 2019, Plaintiff was informed that his request was with a Legal Advisor for “final approval” and to “expect it back within about a week or so.”

16. On January 30, 2019, Plaintiff still had not received the requested records, and sought another status update.

17. On January 31, 2019, Plaintiff was informed that his “request [was] still being worked at this time” and to try back in another two weeks.

18. On February 25, 2019, Plaintiff requested a third status update and was informed that the search had to be rerun.

19. On March 11, 2019, Plaintiff requested a fourth status update.

20. On March 12, Plaintiff was informed that his file was with a Legal Advisor for signature and he should “check back next week.”

21. On March 22, 2019, Plaintiff requested a fifth status update.

22. On March 27, 2019, the Army informed Plaintiff that the file was still with their legal advisor.

23. On April 10, 2019, Plaintiff informed Defendant on his intent to file this lawsuit if the requested records were not received by the end of that week.

24. At the time of this filing, Plaintiff has not received any responsive records regarding his June 7, 2018 FOIA request.

25. Plaintiff is directly and adversely affected by Defendant's failure to make a timely determination and to provide responsive records.

26. By failing to provide Plaintiff with any records responsive to his FOIA request, Defendant has denied Plaintiff's right to this information under the FOIA.

27. Unless enjoined by this court, Defendant will continue to violate Plaintiff's legal right to access of the records that he has requested pursuant to the FOIA.

28. Plaintiff is entitled to reasonable costs of litigation, including attorneys' fees pursuant to the FOIA. *See, e.g.*, 5 U.S.C. § 552(a)(4)(E).

WHEREFORE, Plaintiff prays of this Court to:

A. Order Defendant to immediately provide to Plaintiff copies of all requested non-exempt records sought in Plaintiff's FOIA request of June 7, 2018;

B. Award Plaintiff costs and reasonable attorney's fees in this action, as provided in 5 U.S.C. § 552(a)(4)(E), 28 U.S.C. §2412, or through any other permissible fee-shifting mechanism; and

C. And for such further and other relief as the nature of the cause may require.

Respectfully submitted,

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Attorney for Plaintiff.

Dated: May 2, 2019